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In the Supreme Court of the United States

OCTOBER TERM, 1983

ANGELES RAMONITA GARCIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the courts below erred by imposing a constructive trust upon a condominium apartment in favor of the government without requiring adequate proof that the specific monies used to purchase the condominium had been fraudulently obtained from the government.

1. Between June 1, 1974 and October 19, 1976, petitioner Garcia perpetrated a massive fraud upon the United States by operating a phony barbering and cosmetology school for veterans (Pet. App. 2a-3a). Garcia falsified records to enable veterans to receive Veterans Administration (VA) education assistance benefits without regularly attending classes at petitioner's Academia Puertorriquena de Belleza (Academia) (*id.* at 9a). As the owner of the Academia, petitioner Garcia processed these assistance checks, kept a percentage for herself, backdated enrollment records and charged veterans prohibited fees (*ibid.*).

Petitioner pleaded guilty to conspiring to defraud the United States. In addition, the United States obtained a civil judgment against petitioner under the False Claims Act, 31 U.S.C. (& Supp. V) 231 *et seq.*, requiring her to repay the government $1.2 million or double the amount of the estimated actual damages (Pet. App. 4a). The government recovered approximately $500,000 directly from petitioner Garcia in satisfaction of that judgment (*id.* at 5a).

2. To obtain additional satisfaction of the judgment, the United States commenced the instant suit in the United States District Court for the District of Puerto Rico, challenging title to two condominium apartments, designated as Apartments 10-A and 12-E, held by petitioners Frank Pineiro and Iraida Pineiro Goepp, the children of petitioner Garcia. After a bench trial, the district court held that, subject only to the interests of certain bona fide mortgagors, the government was entitled to the two apartments and the income they had produced (Pet. App. 2a-20a).[1] With respect to Apartment 12-E, the district court imposed a constructive trust to the extent of the government's ascertainable interest in the funds that were used to purchase the apartment. The court found that during September 1975, petitioner Garcia signed an agreement to purchase Apartment 12-E, acting under a power of attorney on behalf of her children. In the process of purchasing the condominium, petitioner Pineiro tendered as a deposit a cashier's check in the amount of $25,000 issued by the First Federal Savings & Loan Association of Puerto Rico (*ibid.*). That same day, petitioners Garcia and Pineiro cashed 27 United

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[1]The district court held that petitioner Garcia conveyed Apartment 10-A without consideration (Pet. App. 14a), and ordered petitioner Pineiro to account for and return to Garcia both title to the apartment and all rents and other profits obtained as a result of his having title to Apartment 10-A (*id.* at 15a). The court of appeals affirmed (Pet. App. 1a-1c) and petitioners present no question regarding Apartment 10-A.

States Treasury checks made out to veteran-students at the Academia, totalling $24,076.87. The checks bore the endorsement of petitioners Garcia and Pineiro (*ibid.*). The remaining $95,000 of the purchase price was tendered on November 15, 1975, also in the form of a cashier's check issued by First Federal, this time in the names of petitioners Pineiro and Goepp. That same day, 151 Treasury checks with a total value of $95,382.16 made out to veteran students of the Academia were cashed with the endorsement of petitioner Garcia. Title was conveyed to petitioners Pineiro and Goepp on December 1, 1975 (Pet. App. 9a).

The district court first held that all of the Treasury checks were fraudulently obtained because, pursuant to 38 C.F.R. 21.4202(b), the Academia would have been disqualified from receiving any VA funds had petitioner Garcia's admittedly fraudulent practices been known (Pet. App. 16a-17a). The court ruled alternatively that petitioner Garcia was the real purchaser of Apartment 12-E because the Treasury checks with her endorsement were used to purchase 99.55% of the apartment (*id.* at 18a). Accordingly, the court ordered petitioners to convey to the government the apartment and 99.55% of all rents that had been derived from the apartment (*id.* at 19a).[2]

The court of appeals affirmed (Pet. App. 1a-1c). The court of appeals "basically" adopted the district court's opinion, but added "a few comments" (*id.* at 1b). The court of appeals found that ample evidence supported the district court's conclusion that the funds utilized in purchasing Apartment 12-E were in all likelihood fraudulently obtained from the government (*id.* at 1b-1c).

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[2]The district court set off certain amounts expended in maintaining the apartment (Pet. App. 19a).

3. Petitioners argue (Pet. 6-10) under various theories that the courts below erred by imposing a constructive trust upon Apartment 12-E without requiring the government to prove that the precise funds used to purchase the apartment were fraudulently obtained. Petitioners' contentions are insubstantial.

Petitioners assert (Pet. 6-8) that the government's proof connecting the fraudulently-obtained checks with the checks used to purchase Apartment 12-E was insufficient because there was no evidence that the Treasury checks had been paid by the United States at the time petitioners obtained the cashier's checks used to purchase the apartment. But it is plainly inferrable that petitioners' checks were traceable to the Treasury checks from the fact that the checks used to purchase the apartment were drawn on the account in an amount virtually identical to the previously deposited Treasury checks. The court's finding, which was made under the proper legal standard,[3] was thus supported by substantial evidence; this factual issue plainly does not warrant review by this Court.

Petitioners also claim (Pet. 8-10) that there was insufficient evidence that the specific Treasury checks used to purchase Apartment 12-E had been obtained fraudulently and that the court of appeals improperly imposed the burden on petitioners to prove that the checks were not tainted by fraud. The court of appeals, however, did not discuss the proper burden of proof at trial; it merely held that the evidence of massive fraud coupled with the

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[3]Petitioners assert (Pet. 6) that the decision below is inconsistent with *Sonnenschein* v. *Reliance Insurance Co.*, 353 F.2d 935, 936 (2d Cir. 1965), which requires that the party seeking to impose a constructive trust must "ascertain[ ] and trac[e] the trust property." The district court, however, expressly relied upon this standard in holding that a constructive trust was appropriate in this case (Pet. App. 16a).

improbability of petitioners' explanations for the source of the money used to buy the apartment were factors that amply supported the district court's finding that the purchase was tainted by fraud. Again, this purely factual determination raises no issue warranting further review.

Finally, petitioners seek review (Pet. 10-12) of the district court's holding that the Treasury checks were fraudulently obtained because her school would not have been eligible for these funds if the VA had discovered the fraud. Petitioners complain that 38 C.F.R. 21.4202 does not support the court's conclusion.

Initially, we note that the district court reached its decision on alternative grounds—it also held that petitioner Garcia was the real purchaser of the apartment (Pet. App. 18a)—and therefore the issue of whether the checks were fraudulently obtained is not dispositive of this case. Indeed, the court of appeals made no mention of the regulation. In any event, petitioners' attempt to place a restrictive interpretation on the VA's regulation ignores the mammoth proportion of Garcia's fraud. Petitioner Garcia successfully hid her fraudulent activities so that the ordinary operation of the regulation to bar her from enrolling VA students was postponed for two years. In that circumstance, the district court could reasonably conclude that the regulation's disqualification sanction should be invoked to deprive petitioners of the fruits of Garcia's success in concealing her fraud. This interpretation of the regulation is reasonable and conflicts with no decision of any other court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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